

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

STATE FARM LLOYDS	§	
v.	§	CIVIL ACTION NO. 6:06cv201
REX LEE WILLIAMS	§	

ORDER ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE

The Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of this case has been presented for consideration. The Report and Recommendation recommends that Plaintiff's Motion for Summary Judgment (document #25) be granted and that Defendant's Counter-Motion for Partial Summary Judgment be (document #26) denied. Defendant filed written objections on November 13, 2006. A response to the written objections was filed by Plaintiff on November 29, 2006.¹

¹United States Magistrate Judge Judith Guthrie ordered Plaintiff to file a response to Defendant's written objections to the Report and Recommendation, limited to the issue of whether the Second Amended Petition, filed in the underlying lawsuit after the Report and Recommendation was issued, triggers a duty to defend.

Having made a *de novo* review of the objections filed by Defendant, the Court finds that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit. The Court looks only at the complaint filed in the underlying lawsuit and the policy to determine whether Plaintiff has a duty to defend. *GuideOne Elite Insurance Company v. Fielder Road Baptist Church*, 197 S.W.3d 305, 308 (Tex.2006). The Magistrate Judge correctly found that the first amended petition filed in state court did not trigger a duty to defend. In addition, the amended complaint that was filed in the underlying lawsuit after Magistrate Judge Guthrie issued her Report and Recommendation does not trigger a duty to defend.² The additional factual allegations contained in the latest pleading do not state independent causes for the injuries at issue and, accordingly, do not trigger coverage. *See Commercial Union Insurance Company v. Roberts*, 7 F.3d 86 (5th Cir.1993). Therefore, the findings and conclusions of the Magistrate Judge are hereby adopted as those of the Court.

In light of the foregoing, it is

ORDERED that State Farm Lloyd's Motion for Summary Judgment (document #25) is **GRANTED** and Defendant's Counter-Motion for Partial Summary Judgment (document #26) is **DENIED**. The Court finds that State Farm Lloyd's is under no duty or obligation to defend the allegations set forth against Rex Lee Williams in Cause No. 05-3569-C styled *Scott Goodwin v. Rex Lee Williams*, in the 241st Judicial District Court of Smith County, Texas, or to indemnify Rex Lee Williams against any sum which may be adjudicated against him in the aforementioned action, or to pay Plaintiff in Cause No. 05-3569-C styled *Scott Goodwin v. Rex Lee Williams*, any claims or

²The Court looks at the factual allegations in the latest amended pleading to determine if a cause of action has been stated falling within the terms of the policy at issue. *Northfield Ins. Co. v. Loving Home Care, Inc.*, 363 F.3d 523, 528 (5th Cir.2004); *Nat'l Union Fire Ins. Co. v. Merchants Fast Motor Lines, Inc.*, 939 S.W.2d 139, 141 (Tex.1997).

judgment whatsoever arising out of Rex Lee Williams' alleged conduct arising out of or related to the incident of August 5, 2005. The counterclaims of Rex Lee Williams are **DISMISSED** with prejudice.

Any motion not previously ruled on is **DENIED**.

So ORDERED and SIGNED this 3rd day of January, 2007.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE